

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANCESCO GALLO,

Plaintiff,

-against-

ALITALIA – LINEE AEREE ITALIANE –
SOCIETA PER AZIONI, PIERANDREA GALLI,
and GIULIO LIBUTTI,

Defendants.

Case No. 07 CV 06418 (CM)(RLE)

**DECLARATION OF ALAN M.
KORAL IN SUPPORT OF
DEFENDANTS' MOTION TO
EXCLUDE THE AFFIDAVIT OF
NUNZIA FATICA GALLO**

ALAN M. KORAL hereby declares under penalties of perjury pursuant to 28 U.S.C. §1746 as follows:

1. I am a member of the Bar of this Court and am a shareholder of Vedder Price P.C., attorneys for Defendants Alitalia-Linee Aeree Italiane, S.p.A., Pierandrea Galli and Giulio Libutti (collectively, the “Defendants”).

2. I submit this Declaration in support of Defendants’ Motion to Exclude the Affidavit of Nunzia Fatica Gallo dated July 2, 2008 (the “Affidavit”) or, in the alternative, for an Order, pursuant to Fed. R. Civ. P. 56(e)(1), permitting Defendants to take the affiant’s deposition and to file a supplemental brief addressing such deposition and the Affidavit.

3. Defendants filed two motions for summary judgment dismissing the Complaint, pursuant to Fed. R. Civ. P. 56(b), on April 28, 2008 (the “Motions”). Plaintiff’s papers in opposition to the Motions were ultimately filed on June 27, following the Court’s granting of extensions of time to Plaintiff totaling six weeks from the date on which those opposition filings were originally due.

4. On July 22, Plaintiff appeared for deposition in another case, *Rylott-Rooney v. Alitalia*, No. 07-cv-11091, at which Defendants' counsel was present. Plaintiff made no reference to the existence of any nonparty affidavits at that time.

5. On the evening of July 24 at 7:06 p.m., almost a full month after Plaintiff's opposition papers were filed, his counsel, Derek T. Smith, Esq. ("Smith"), attempted to file the Affidavit by attaching it to a cover letter purporting to excuse the lateness of the filing, and submitting both documents via ECF. A true copy of the Affidavit and cover letter is annexed as Exhibit A hereto.

6. I declare under penalty of perjury that the foregoing is true and correct.

DATED: July 25, 2008
New York, New York

/s/ Alan M. Koral
Alan M. Koral

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANCESCO GALLO,

Plaintiff,

-against-

ALITALIA – LINEE AEREE ITALIANE –
SOCIETA PER AZIONI, PIERANDREA GALLI,
and GIULIO LIBUTTI,

Defendants.

Case No. 07 CV 06418 (CM)(RLE)

CERTIFICATE OF SERVICE

I, Alan M. Koral, hereby declare, pursuant to 28 U.S.C. 1746, under penalty of perjury, that on July 25, 2008, I caused a copy of the foregoing **DECLARATION OF ALAN M. KORAL IN SUPPORT OF DEFENDANTS' MOTION TO EXCLUDE THE AFFIDAVIT OF NUNZIA FATICA GALLO** to be served upon Plaintiff by electronically filing same, thereby ensuring that Plaintiff's attorney, Derek T. Smith, Esq. of Akin & Smith, LLC, received same because he is a registered e-filer and registered to receive e-notices in this case.

DATED: July 25, 2008

s/ Alan M. Koral

Alan M. Koral